In the High Court of Judicature at Madras

Dated: 12.11.2007

Coram

The Honourable Mr.JUSTICE CHANDRU

Writ Petition No.30727 of 2007
& M.P.Nos.1 & 2 of 2007

P.Manivannan

.... Petitioner

Vs.

1. The Director of School Education,
Chennai. 600 006.

2. The Joint Director of Higher
Secondary Education,
College Road, Chennai - 600 006.

3. YMCA College Sports Higher
Secondary School, Nandanam,
Chennai - 600 035
represented by its Correspondent.

4. J.Ratna Sigamani

.... Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of writ of certiorarified mandamus calling for the records relating to Order Rc.No.Esst/SHS/05/2007 dated 31.08.2007 passed by the third respondent and quash the same and direct the third respondent to implement the earlier orders of the Second Respondent vide No.Na.Ka.No.82060/lgps;a{ 8/97 dated 24.06.98 and the order of the first respondent vide No.Mu.Mu.No.43583/lgps;a{ 5/3/07 dated 2.08.2007 by appointing the petitioner to the post of Head Master w.e.f. 01.06.1997 with all consequential benefits.

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For Petitioner : Mr.P.V.S.Giridhar

For Respondents: Mr.V.Manoharan, G.A. - R1 & R2
Mr.Muthukumaraswamy, S.C.
For Mr.A.Jenasenan - R3 & R4

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O R D E R

The petitioner is an aspirant for the post of Headmaster in the third respondent school. The third respondent school is a Sports Higher Secondary School, which is an aided private school in terms of the Tamil Nadu Recognised Private Schools (Regulation) Act 1973 and the Rules framed thereunder.

2. Earlier when the third respondent appointed one Jayakumar, his appointment was challenged in various proceedings and respondents 1 and 2 refused to grant approval to the appointment of the said Jayakumar. Finally after protracted litigation, the first respondent/Director of School Education was directed to consider the said issue as to the qualification of the said Jayakumar to hold the post. By an order dated 2.8.2007, the first respondent/Director held that the said Jayakumar was not qualified to hold the post of Headmaster and only the petitioner is fully qualified. Therefore, the appointment made in favour of the said Jayakumar was set aside.

3. Subsequent to the said order, the third respondent School appointed the fourth respondent J.Ratnasigamani, a post-graduate teacher, as Headmaster of the school. While appointing the fourth respondent, it was stated that he has seniority and ability and accordingly he was desirable to hold the post of Headmaster of the third respondent school. It is this order which is under challenge before this Court. Further the petitioner also seeks for a direction to implement the second respondent's order dated 24.6.1998 wherein the petitioner was directed to be appointed as an Headmaster. A reading of the said order dated 24.6.1998 only reveals that the application of the petitioner will have to be considered in accordance with the Rule by the School Management and the Correspondent was advised accordingly.

4. Earlier against the order of the Joint Director, Higher Secondary Education dated 03.4.2000, the said Jayakumar filed a writ petition being W.P.No.8485 of 2000 and the third respondent school filed another writ petition being W.P.No.8612 of 2000 and the order dated 26.4.2007 was passed in the said writ petition. But instead of the Director passing the order, the Joint Director of Higher Secondary Education passed an order. Therefore, once again the Director was directed to pass orders as directed by this Court. Pursuant to the same, the Director of School Education passed an order dated 2.8.2007 referred to earlier. On behalf of the third respondent a counter affidavit dated 5.11.2007 has been filed.

5. Heard the arguments of Mr.P.V.S.Giridhar, learned counsel appearing for the petitioner, Mr.R.Muthukumaraswamy, learned senior counsel leading Mr.A.Jenasenan, learned counsel appearing for R3 and

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R4 and Mr.V.Manoharan, learned Government Advocate appearing for R1 and R2 and perused the records.

6. Learned counsel appearing for the petitioner makes two submissions, viz., i) that the School is not a Minority Institution as there is no declaration from any Civil Court in this regard and ii) even if it is a Minority Institution, the consideration of the petitioner's claim should be made with reference to the vacancy which arose during the academic year 1997-98 and it cannot be determined on the basis of the present requirement. If it is considered in the light of the same, then the petitioner alone is qualified to hold the post. Therefore, his prayer should be granted.

7. With reference to the status of the said Institution, it is seen from the records that the Educational Agency of the School, namely, the National Council of YMCA, New Delhi has filed a Civil Suit before this Court in C.S.No.345 of 1998. They have also taken out an original application being O.A.No.230 of 1998 and this court by an interim order dated 30.4.1998 had made the following order, which was found in paragraph 2:

> "2. It appears, all along the petitioner had been enjoying the status of a minority institution. Therefore, the same status quo is to continue and Notice to the respondent in six weeks."

8. Subsequently, in respect of another workman's dispute came before this Court, this Court after referring to the interim order referred to above held that until any decision to the contrary is taken, the School will have to be treated as Minority Institution. The said decision of the Division Bench is reported in 2007 (3) LLN 389 (YWCA College Sports Higher Secondary School (Sports Wing) represented by its Correspondent), Chennai V. Presiding Officer, Principal Labour Court, Chennai and another. The following passage found in para 16 from the said judgment may be usefully reproduced:

> "16. In so far as the finding that the petitioner is not a minority institution is concerned, the matter is pending before this Court in C.S.No.348 of 1998 and an interim order is also granted by this court in favour of the petitioner-management by order, dated April 30, 1998. Hence the Labour Court is not justified in giving a finding that the petitioner school is not a minority school. Hence the said finding given by the Labour Court is set aside."

9. Therefore, as of now, the School will have to be treated as a Minority Institution having the full protection under Article 30 (1) of the Constitution of India. Once it is a minority

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institution, then the question as to who should be appointed as a Headmaster of the School is largely left to the decision of the School Management and the Education Department has very little say on this issue.

10. The Supreme Court in its decision reported in (2007) 1 SCC 386 (Secy. Malankara Syrian Catholic College V. T.Jose) reiterated the legal position that in respect of a head of the Minority Institution, the decision of the Minority Management is final and the Court cannot interfere with the said right. In doing so, the Supreme Court once again affirmed the earlier decision of the Supreme Court in 1998 6 SCC 674 (N.Ammad V. Manager, Emjay High School). Paragraph 18 found in Ammad Case may be usefully extracted above.

> "18. Selection and appointment of Headmaster in a school (or Principal of a college) are of prime importance in administration of that educational institution. The Headmaster is the key post in the running of the school. He is the hub on which all the spokes of the school are set around whom they rotate to generate result. A school is personified through its Headmater and he is the focal point on which outsiders look at the school. A bad Headmaster can spoil the entire institution, an efficient and honest Headmaster can improve it by leaps and bounds. The functional efficacy of a school very much depends upon the efficiency and dedication of its Headmaster. This pristine precept remains unchanged despite many changes taking place in the structural patterns of education over the years."

11. Therefore in the light of the same that the argument of the petitioner that the petitioner's case should be considered cannot be accepted and the interference by the outside authorities, namely, Education Department, in the appointment of the Headmaster also has to be rejected.

12. However, the argument of the learned counsel for the petitioner that if unqualified persons are appointed even by a Minority Management, certainly this Court can strike down such an appointment by the Minority Management, because right to manage does not include right to mismanage and the regulations prescribing qualifications to hold the post of Headmaster are equally binding on a Minority Management. Since the said Jayakumar is no longer in service, it is not necessary to go into the relative merits or demerits of the appointment of the said Jayakumar.

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13. The fact of the matter is that after the order dated 24.6.1998 of the Joint Director and the order of the Director of Education dated 31.8.2007, the third respondent School has appointed the fourth respondent and nothing is mentioned about the fourth respondent lacking in qualification to hold the post of Headmaster. It was for this reason the learned counsel submits that the vacancy position should be taken back to the year 97-98. This Court is unable to agree with the said submission. Even the order of the Joint Director dated 24.6.1998 does not direct the appointment of the petitioner in the place of Jayakumar, it merely direct the School Management to consider his case.

14. In any event, once the third respondent School's position is considered as a Minority School, then the appointment of the Headmaster will have to be necessarily made by the School Management. The reliance placed upon the order dated 24.6.1998 is misplaced. The School has filled up the post of Headmaster, who cannot be said to be lacking in any qualification for holding the post.

15. Under the circumstances, the writ petition is devoid of merits and the same is dismissed. No costs. Consequently, M.P.Nos. 1 and 2 of 2007 are also dismissed.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

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To

1. The Director of School Education, Chennai.

2. The Joint Director of Higher Secondary Education,
College Road, Chennai - 600 006.

1 cc to Government Pleader, Sr. 67087
1 cc to Mr.A. Jenasenan, Sr. 67112

W.P.No.30727 of 2007
& M.P.Nos.1 & 2 of 2007

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